

**ASSEMBLY BILL**

**No. 812**

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**Introduced by Assembly Member Mitchell**

February 21, 2013

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An act to amend Sections 8402, 8403, 8406.6, 8406.7, 8406.9, 8407, and 8408 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 812, as introduced, Mitchell. Child care: contracts: termination and suspension.

(1) Existing law requires the State Department of Education to provide an independent appeal procedure in certain instances, including, but not limited to, contract termination or suspension, to each contracting agency providing specified child care and development services. Existing law requires the contracting agency to have submitted all previously required standard monthly or quarterly reporting forms before filing an appeal petition.

This bill would repeal the requirement that the department provide an independent appeal procedure, as described above, in the instance of contract suspension. The bill would also repeal the requirement that the contracting agency submit all previously required standard monthly or quarterly reporting forms before filing an appeal petition.

(2) Existing law requires the Superintendent of Public Instruction to establish a contract classification system with 3 classes of contract designations; a clear contract, a provisional contract, and a conditional contract, as specified.

This bill would revise the 3 classes of contract designations, as specified.

(3) Existing law authorizes any contracting agency that evidences chronic fiscal or program violations of a felony nature, as specified, to have its contract immediately suspended or terminated provided there is documented evidence of the violations and upon review and recommendation of the general counsel of the department.

This bill would instead authorize a contracting agency that evidences any specified acts or omissions to have its contract or contracts immediately terminated provided there is documented evidence of the acts or omission and upon review and recommendation of the general counsel of the state department. The bill would add additional acts or omissions, as described, that may result in immediate termination of an agency's contract or contracts and require the notice of immediate termination of a contract to be served in a specified manner.

(4) Existing law authorizes a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of certain crimes to have its contract immediately suspended or terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. Existing law authorizes a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and require the contract termination to occur after notice, as specified, is provided at least 90 days before termination.

This bill would instead authorize a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, to have its contract immediately terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. The bill would repeal the authority of a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and the requirement that this termination occur after notice, as specified, is provided at least 90 days before termination.

(5) Existing law authorizes local contracting agencies to continue to operate under their contract during an appeal of termination, unless the specified action is based on imminent danger to the health and welfare of children. Existing law requires, if the contract is being terminated based on imminent danger to the health and welfare of children, the reason for the termination to be specified by the department in its notice of termination.

This bill would instead authorize local contracting agencies to continue to operate under their contract during an appeal of termination, unless the action is an immediate termination action, as specified, in which case a local contracting agency would not be authorized to continue to operate under the contract after the effective date given in the notice of immediate termination.

This bill would make conforming and nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8402 of the Education Code is amended  
2 to read:

3 8402. ~~The State Department of Education~~ *department* shall  
4 provide an independent appeal procedure to each contracting  
5 agency providing child care and development services pursuant  
6 to Section 8262. ~~Prior to filing an appeal petition, the contracting~~  
7 ~~agency shall have submitted all previously required standard~~  
8 ~~monthly or quarterly reporting forms to the State Department of~~  
9 ~~Education. The appeal procedure 8262 that shall be conducted by~~  
10 ~~the Office of Administrative Hearings and shall be provided upon~~  
11 ~~an appeal~~ petition of the contracting agency in any of the following  
12 circumstances:

13 (a) ~~Termination or suspension~~ of a contracting agency's contract.

14 (b) Denial of more than 4 percent or twenty-five thousand dollars  
15 (\$25,000), whichever is less, of a local contracting agency's  
16 contracted payment for services schedule.

17 (c) Demand for remittance of an overpayment of more than 4  
18 percent or twenty-five thousand dollars (\$25,000), whichever is  
19 less, of a local contracting agency's annual contract.

20 SEC. 2. Section 8403 of the Education Code is amended to  
21 read:

22 8403. All hearings *required by Section 8402* shall be conducted  
23 according to the provisions of the Administrative Procedure Act  
24 (Chapter 5 (commencing with Section 11500) of Part 1, 1 of  
25 Division 3 of Title 2 of the Government Code), except as otherwise  
26 directed in this article.

SEC. 3. Section 8406.6 of the Education Code is amended to read:

8406.6. The Superintendent of Public Instruction shall establish a contract classification system for purposes of identifying, monitoring, and providing technical assistance to contractors as follows:

(a) Clear contract. This designation shall be given to ~~contracted agencies that are in full compliance with all applicable statutory provisions, funding terms and conditions, and applicable program quality guidelines~~ *a contract that is neither a provisional contract, as described in subdivision (b), nor a conditional contract, as described in subdivision (c).*

(b) Provisional contract. This designation applies to *a contracting agency's first contract for any particular service, if by an existing contracted agencies; contract agency for a new or different type of service or agencies that are awarded a new by a contracting agency that does not have an existing contract for services.* The time frame of a provisional contract is at the discretion of the ~~State Department of Education~~ *department* and is given to ensure ~~demonstrated that the contracting agency can demonstrate~~ *fiscal and programmatic compliance before granting the contract is designated as a clear contract status.* The contract status shall be reviewed annually.

(c) Conditional contract. This designation applies to *a high-risk contracted agencies contract awarded to a contracting agency that evidence evidences* ~~and or programmatic noncompliance, or both fiscal and programmatic noncompliance. These agencies shall not be eligible to apply for additional State Child Development program funds, and are~~ *A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the department for all child care and development program purposes and is* subject to any restrictions deemed reasonable to secure compliance. The conditional contract shall include a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of contract and to qualify the agency for clear contract status, and technical assistance plan. Failure to demonstrate substantive progress toward fiscal or program compliance within six months of that designation shall constitute a breach of contract and ~~be may~~ *subject the contract* to termination for any applicable cause

1 specified in Section 8406.7 or 8407, in accordance with Section  
2 8402.

3 (d) Agencies with conditional contracts shall receive technical  
4 assistance from the Child Development Division of the ~~State~~  
5 ~~Department of Education~~ *department*.

6 SEC. 4. Section 8406.7 of the Education Code is amended to  
7 read:

8 8406.7. (a) ~~Any~~ *A contracting agency that evidences chronic*  
9 ~~fiscal or program violations of a felony nature~~ *any of the following*  
10 ~~acts or omissions~~ *may have its contract suspended or or contracts*  
11 ~~immediately terminated immediately, provided if there is~~  
12 ~~documented evidence thereof, of the acts or omissions, and upon~~  
13 ~~review and recommendation of the general counsel of the State~~  
14 ~~Department of Education. A fiscal or programmatic violation~~  
15 ~~constituting a breach of contract includes one or more of the~~  
16 ~~following~~ *department:*

17 (1) Fraud, or conspiracy to defraud.

18 (2) ~~Misuse or misappropriation of state or federal funds in~~  
19 ~~violation of the State of California Accounting Manual, including~~  
20 ~~a violation of Section 8406.9.~~

21 (3) Embezzlement.

22 (4) Threats of bodily or other harm to ~~a state officials~~ *official*.

23 (5) Bribery or attempted bribery of a state official.

24 (6) Unsafe or unhealthy physical environment or facility.

25 (7) Substantiated abuse or molestation of children.

26 (8) Failure to report suspected child abuse or molestation.

27 (9) Theft of supplies, equipment, or food.

28 (10) *Cessation of operations without the permission of the*  
29 *department, or acts or omissions evidencing abandonment of the*  
30 *contract or contracts.*

31 (11) *Failure of a program operating pursuant to Article 3*  
32 *(commencing with Section 8220) or Article 15.5 (commencing with*  
33 *Section 8350) to reimburse a significant number of approved child*  
34 *care providers, as determined by the department, within 15*  
35 *calendar days after the date set in a plan for timely payments to*  
36 *providers adopted by the contracting agency pursuant to Section*  
37 *18226 of Title 5 of the California Code of Regulations, unless the*  
38 *failure is attributable to a delay in receiving apportionments from*  
39 *the state.*

(12) Failure of a program not operating pursuant to Article 3 (commencing with Section 8220) or Article 15.5 (commencing with Section 8350) to pay salaries owed to employees, pay federal payroll tax, or reimburse a significant number of child care providers, as determined by the department, affiliated with a contracting agency pursuant to Article 8.5 (commencing with Section 8245) for more than 15 days after the employee salaries, federal payroll taxes, or reimbursement payments were due, unless the failure is attributable to a delay in receiving apportionments from the state.

(b) An agency whose contract is immediately terminated ~~for cause~~ pursuant to this section retains appeal rights in accordance with Section 8402.

(c) Notwithstanding any service provision in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), a notice of immediate termination shall be served on the contracting agency by personal service or at the last address on file with the department, by overnight mail or certified mail. Service may be proved in the manner authorized in civil action. Service by mail is complete at the time of deposit.

~~(e)~~

(d) ~~The State Department of Education~~ department shall advise child care and development contractors of the ~~provision~~ provisions of this section within 30 working days of its enactment ~~the effective date of the act amending this section during the 2013–14 Regular Session of the Legislature.~~

SEC. 5. Section 8406.9 of the Education Code is amended to read:

8406.9. (a) An agency that places a person in a position of fiscal responsibility or control who has been convicted of ~~any a~~ crime specified in Chapter 2 (commencing with Section 458) of, Chapter 4 (commencing with Section 470) of, Chapter 5 (commencing with Section 484) of, Chapter 6 (commencing with Section 503) of, or Chapter 7 (commencing with Section 518) of, Title 13 of Part 1 of the Penal Code involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract ~~suspended or immediately terminated immediately~~ pursuant to Section 8406.7 if there is documented evidence of the conviction, and upon review

1 and recommendation of the general counsel of the ~~State Department~~  
2 ~~of Education~~ *department*.

3 (b) For purposes of this section, “position of fiscal responsibility  
4 or control” includes any authority to direct or control expenditure  
5 of, or any access to, state or federal child care and development  
6 funds received pursuant to this chapter whether that authority or  
7 access is conferred based on the person’s status as an employee,  
8 director, manager, board member, or volunteer, or based on any  
9 other status.

10 ~~(e) An agency whose contract is terminated pursuant to this~~  
11 ~~section may appeal that action in accordance with Section 8402.~~

12 ~~(d) Termination pursuant to this section shall not occur without~~  
13 ~~notice as described in Section 8406 at least 90 days prior to~~  
14 ~~termination.~~

15 ~~(e)~~

16 (c) If the agency provides evidence to the ~~State Department of~~  
17 ~~Education~~ *department*, *before the effective date given in the notice*  
18 *of immediate termination*, that the convicted person has been  
19 removed from the position of fiscal responsibility or control and  
20 provides assurance that the person will not be returned to a position  
21 of fiscal responsibility or control, the ~~State Department of~~  
22 ~~Education~~ *department* shall withdraw the termination action.

23 SEC. 6. Section 8407 of the Education Code is amended to  
24 read:

25 8407. Except for causes listed in ~~Section~~ *Sections 8406.7 and*  
26 *8406.9*, termination of ~~existing funding a child care and~~  
27 *development contract* shall not occur without good cause and  
28 without notice as described in Section 8406 at least 90 days ~~prior~~  
29 ~~to before the effective date given in the notice of~~ termination.

30 SEC. 7. Section 8408 of the Education Code is amended to  
31 read:

32 8408. Actions as defined in subdivisions (a) to (c), inclusive,  
33 of Section 8402 shall remain in effect during the appeal process.  
34 However, local contracting agencies may continue to operate under  
35 the contract during an appeal of termination, unless the action is  
36 ~~based on imminent danger to the health or welfare of children. If~~  
37 ~~the local agency contract is being terminated for this reason, the~~  
38 ~~reason shall be specified by the department in its notice of~~  
39 ~~termination~~ *an immediate termination action taken pursuant to*  
40 *Section 8406.7 or 8406.9, in which case a contracting agency shall*

- 1 *not continue to operate under the contract after the effective date*
- 2 *given in the notice of immediate termination.*

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